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Nos. 195, 196, and 197

In the Supreme Court of the United States

OCTOBER TERM, 1935

UNITED STATES OF AMERICA, PETITIONER

v.

BANK OF NEW YORK AND TRUST COMPANY

UNITED STATES OF AMERICA, PETITIONER

v.

PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY

UNITED STATES OF AMERICA, PETITIONER

v.

LOUIS H. PINK

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the District Court (No. 195, R. 80) in the Bank of New York and the Manhattan Company cases is reported in 10 F. Supp. 269. The

opinions of the Circuit Court of Appeals (No. 195, R. 89; No. 196, R. 53; No. 197, R. 56) are reported in 77 F. (2d) 866, 880, 881.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered May 27, 1935 (No. 195, R. 109; No. 196, R. 70; No. 197, R. 73). The petition for writs of certiorari was filed July 1, 1935, and was granted October 14, 1935. The jurisdiction of this Court rests upon the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix hereto, *infra*, pp. 85–89, including the following:

Section 24 of the Judicial Code, as amended (U. S. C., Title 28, Section 41);
Section 27, New York Insurance Law;
Section 63, New York Insurance Law;
also, the assignment by the Soviet Government to the United States Government, dated November 16, 1933.

QUESTIONS PRESENTED

1. Whether Soviet decrees dissolving Russian insurance corporations, appropriating their assets, and terminating all rights of creditors and stockholders therein, were effective to transfer to the Soviet Government title to New York assets of such

corporations in excess of amounts required for payment of claims arising out of business transacted by such corporations in the United States.

2. Whether the assignment executed by the Soviet Government in favor of the United States, on November 16, 1933, was sufficient to transfer to the United States such assets of the Soviet Government.

3. Whether the actions in the State court, and the instant suits in the Federal court, are actions *in rem* or actions *in personam* within the rule respecting priority of jurisdiction between Federal and State courts; and even if the State court actions and/or the Federal court actions are actions *in rem*, whether the State court actions, since they involve rights in property of a sovereign, can defeat the jurisdiction of the Federal court to adjudicate the title of the United States to these assets.

4. Whether Section 24 (1) of the Judicial Code requires the Federal courts to entertain an action in which the United States seeks to recover property claimed by it.

STATEMENT

The Russian insurance corporations whose assets are involved in this litigation had conducted business in the United States for many years prior to the Soviet Revolution in Russia, in November, 1917. They had made with the Superintendent of Insurance of the State of New York or with other trustees in New York the deposit of assets required

by Section 27 of the New York Insurance Law as a condition precedent to doing business in that State.[1] As a result of the situation of these companies caused by the Soviet Revolution, a number of actions were instituted in the courts of New York by persons purporting to act on behalf of these and other Russian insurance corporations doing business in New York,[2] seeking the recovery from the Superintendent of Insurance or from other trustees, of that portion of these deposits not required to respond to claims of persons within the protection of Section 27 of the New York Insurance Law.[3] In order to overcome the uncertainties connected with the New York business of these corporations, caused by this litigation and by the extinguishment of the corporate life of these corporations by the laws of Russia, the Superintendent of Insurance, in 1925 and 1926, pursuant to orders of the Supreme Court of New York, in accordance

[1] The text of this statute is included in the Appendix to this brief, p. 85, *infra*.

[2] The Russian insurance companies doing business in New York, other than those whose assets are herein involved, were Russian Reinsurance Co. and Second Russian Insurance Co.

[3] *Andre* v. *Beha*, 211 App. Div. 380, aff'd, 240 N. Y. 605; *First Russian Insurance Co.* v. *Beha*, 240 N. Y. 601; *Russian Reinsurance Co.* v. *Stoddard*, 240 N. Y. 149.

For an extended discussion of the history of the New York business of these and other Russian insurance corporations prior to 1925, see opinion of Referee Donnelly in the consolidated actions in the New York Supreme Court, *Moscow Fire Insurance Co. et al.* v. *Bank of New York & Trust Co. et al.*, and *Morro et al.* v. *Moscow Fire Insurance Co. et al.*, contained in Record, Bank of New York & Trust Co., pp. 53–71.

with Section 63 of the New York Insurance Law,[4] took possession of all the assets of these corporations situated in New York. These orders included injunctions against the prosecution in New York of actions against these corporations or their assets. The Superintendent employed these assets, together with the assets already in his possession pursuant to the requirements of Section 27 of the New York Insurance Law, in paying claims of creditors of these corporations whose claims arose out of transactions of the companies in New York, i. e., those persons whom the New York courts in previous decisions had held entitled to reach similar assets of foreign insurance corporations. *Matter of People (City Equitable Insurance Co.)*, 238 N. Y. 147; *Matter of People (Norske Lloyd Insurance Co.)*, 242 N. Y. 148.

The subsequent history of the liquidation of the New York assets of the companies herein concerned is set forth in the following brief statements relating to each.

UNITED STATES *v.* BANK OF NEW YORK & TRUST CO. (MOSCOW FIRE INSURANCE CO.)

After the Superintendent had completed the liquidation of claims entitled under the above-mentioned decisions to satisfaction out of the assets in his possession, and acting pursuant to court order (R. 50–56),[5] he turned over the surplus assets of

[4] The text of this statute is included in the Appendix to this brief, p. 86, *infra*.

[5] All references to the Record relate to the Record in the case of Bank of New York & Trust Co., unless otherwise indicated.

the Moscow Fire Insurance Co., consisting of cash and securities having a value of $1,080,399.54 on April 18, 1933, to the Bank of New York & Trust Co., the defendant herein, as agent and depositary of Moscow Fire Insurance Company, and Paul Lucke, as surviving director and conservator of said company, upon a stipulation that this fund was not to be withdrawn except upon the order of a court of competent jurisdiction. This deposit was made pursuant to an order of the New York Supreme Court (R. 23–26) entered upon the remittitur of the New York Court of Appeals subsequent to its decisions in *Matter of People (Russian Reinsurance Co.)*, 255 N. Y. 415, and *Matter of People (Northern Insurance Co.)*, 255 N. Y. 433.

On April 19, 1933, and June 23, 1933, respectively, two actions[6] were commenced in the Supreme Court of New York to which the parties were the Bank of New York & Trust Co. (the respondent herein), Paul Lucke, as surviving director and conservator of Moscow Fire Insurance Company, and various persons who asserted claims against this company, either as creditors or as stockhold-

[6] These actions were entitled, respectively, *Moscow Fire Insurance Co. et al.* v. *Bank of New York & Trust Co. et al.*, and *Morro et al.* v. *Bank of New York & Trust Co. et al.* The complaint in the former action is contained in the Record herein, pp. 12–16; the Referee's opinion in both actions is contained in the Record, pp. 53–71.

ers, which actions had for their object the determination of the disposition of the assets in the possession of the bank and the satisfaction of the various claims out of these assets. These actions were later consolidated and referred to a referee to hear and determine. (R. 58.)

On August 22, 1934, a judgment was entered on the referee's report, making the following disposition of the funds in the possession of the defendant herein, which at that time consisted of cash in the sum of $1,136,879.54 (R. 59):

$436,879.54 set aside to meet claims of creditors of the company, including not only those who had appeared to assert their claims, but also those who might later appear and assert claims (R. 71). (The record contains no indication that there are any other persons who might assert claims against the unawarded portion of this fund.)

$700,000 to be distributed pro rata to shareholders at the rate of $70 per share for each of the 10,000 shares outstanding (R. 71). The referee's report (R. 70) states that 6,500 shares of 10,000 shares outstanding were represented in the actions before him.

Thirteen claims of creditors were allowed for a total of $206,950.64. (R. 71.) These claims may be classified as follows:

(a) Claims based on policies issued in Russia, and payable in Russia, in Russian rubles;

(b) Claims of corporations of foreign countries other than Russia based upon contracts with or

agency services performed for the company both before and after its dissolution in Russia;

(c) A claim for personal services in Russia pursuant to an employment contract in rubles made with the company prior to its dissolution;

(d) Claims for personal services including legal services rendered to the company outside of Russia subsequent to its dissolution, including a claim of $60,000 of Paul Lucke, the surviving director.

The amount in the possession of the defendant herein not ordered to be distributed to designated individuals, namely, $579,928.90,[7] was directed by the judgment of 1934 to be retained by the Bank of New York & Trust Co. against further claims of creditors and stockholders which might in the future be presented.

The United States filed its bill of complaint in the instant action on August 22, 1934, the same day on which was entered the judgment on the referee's report in the pending State court actions, as described above.

In its bill the United States alleged that in 1918, by decrees of the Soviet Government, Moscow Fire Insurance Company had been dissolved and all its right, title, and interest and all the right, title, and interest of all of its stockholders in its property, including the deposit hereinbefore men-

[7] $436,879.54 set aside to meet claims of creditors, and expenses of the actions, less $206,950.64 awarded to specific claimants, plus $350,000 set aside for stockholders who had not appeared in the actions.

tioned, were appropriated by the Soviet Government; and that on November 16, 1933, on the occasion of the recognition of the Soviet Government by the United States Government, the Soviet Government had assigned to the United States certain claims against American nationals, including the property in the United States formerly owned by Moscow Fire Insurance Company. The bill was dismissed by the District Court on the grounds: (1) that the assignment to the United States did not include these particular funds, and (2) that the decrees of the Soviet Government were ineffective to transfer to the Soviet Government title to such assets in the United States, inasmuch as their confiscatory character was contrary to public policy. The Circuit Court of Appeals affirmed the orders of the District Court, not on either of the above grounds and not on the merits, but on the sole ground that prior to the institution of the action in the Federal court the funds had been taken into the custody of the New York State court and hence that an action could not be maintained in the Federal court which would disturb that custody. This Court granted certiorari on October 14, 1935.

UNITED STATES *v.* PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY (NORTHERN INSURANCE CO. OF MOSCOW)

In this action the history of the funds in the possession of the defendant, is substantially the same as in the *Bank of New York & Trust Company* case

up to the point when the liquidation proceedings by the Superintendent of Insurance were terminated, and the funds paid to the defendant bank, under an order that they were not to be withdrawn except upon the "order of a court of competent jurisdiction."

This deposit, consisting of cash and securities valued at $245,307.60, was made on or about August 3, 1933 (Manhattan Co., R. 7–15), and was received by the defendant herein as agent and depositary of Northern Insurance Company of Moscow, pursuant to an order of the Supreme Court of New York (Manhattan Co., R. 23–25) dated June 6, 1933, entered on the remittitur of the New York Court of Appeals following its decision in *Matter of People* (Northern Insurance Company of Moscow) 262 N. Y. 453.

On November 13, 1933, the New York Supreme Court made an order directing the defendant herein to deliver all funds of Northern Insurance Company of Moscow in their possession as agent and depositary, to the defendant herein as assignee for the benefit of creditors of Northern Insurance Company of Moscow (Manhattan Co., R. 26–27), and thereafter the defendant herein received, as assignee for the benefit of creditors, assets valued at $249,815.03[8] (Manhattan Co., R. 12). The de-

[8] The difference between this amount and the amount of $245,307.60 mentioned above, results from a revaluation of certain of the assets received and the receipt of additional assets not specified in this record.

fendant herein received these assets as assignee pursuant to an assignment for the benefit of creditors made on behalf of Northern Insurance Company of Moscow, on May 6, 1932. After the receipt of these assets by the defendant herein nineteen persons filed claims with the defendant herein as assignee, for a total amount of $271,723.22 (Manhattan Co., R. 12).

On or about May 25, 1934, the defendant herein, as assignee, filed a petition and account in the Supreme Court of New York (Manhattan Co., R. 13). On July 7, 1934, that court made an order directing that the petition and account of the defendant as assignee be referred to a referee for the purpose, among other things: (1) to take and state the account of the assignee, and to hear any objections in respect thereto; and (2) to take proof and report as to all claims of creditors filed with the assignee (Manhattan Co., R. 28–29).

The referee had not rendered a final report prior to the commencement of the instant action by the United States, on August 25, 1934 (Manhattan Co., R. 13). The bill of complaint in this action (Manhattan Co., R. 2–5) contains in general the same allegations as the bill of complaint in the *Bank of New York & Trust Company* case. Thereafter the history of the instant action i. e., the proceedings in the courts below, is the same as that of the action *United States* v. *Bank of New York & Trust Company.*

The history of the funds in the possession of the defendant herein, comprising the surplus assets of the First Russian Insurance Company, is again similar to those involved in the *Bank of New York & Trust Company* case, and the *President and Directors of the Manhattan Company* case, so far as concerns the origin of the funds, the taking of possession of them by the Superintendent of Insurance, and their employment for the payment of claims against the Company, based upon domestic transactions.

The surplus ($1,393,196.42) remaining after the payment of such claims has been retained by the Superintendent pursuant to orders of the Supreme Court of New York (Pink, R. 37–47), on the basis of the decision of the Court of Appeals in *Matter of People* (*Russian Reinsurance Company*), 255 N. Y. 415, for the purpose of paying claims against the Company based upon transactions not connected with the business of the company in New York. Such claims have been in litigation in the State courts of New York since 1931, when the above mentioned decision was rendered. Certain payments on account of these claims have been made by the Superintendent, but the greater portion ($1,170-783.36) of the surplus assets was still in the possession of the Superintendent (Pink, R. 10) when the United States filed its bill of complaint in this

action against the Superintendent, on November 14, 1934 (Pink, R. 4–6).

An order was made by the District Court on December 20, 1934, (Pink, R. 50) granting a motion of the defendant to dismiss the complaint for insufficiency, and denying complainant's motion for an injunction *pendente lite*. No opinion was rendered. Thereafter the United States appealed to the Circuit Court of Appeals, and the appeal was prosecuted in conjunction with the appeals in the two companion cases, as recited herein above.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In the *Bank of New York* and *Manhattan Company* cases, in holding that after the termination of the actions brought by the Superintendent of Insurance to effect payment to creditors whose claims arose out of domestic transactions, and after all such creditors had been paid in full, the State court retained jurisdiction over the funds in controversy,—in view of the fact that by Soviet law the funds had, prior to this time, become the property of the Soviet Government.

2. In the *Bank of New York* and *Manhattan Company* cases, in holding that if the Supreme Court of the State of New York had previously acquired exclusive jurisdiction and control over the funds in controversy, it did not relinquish such exclusive jurisdiction and control over the said funds by virtue of its orders that the funds be deposited

in the respondent banks, subject to the further order of *any* court of competent jurisdiction.

3. In the *Pink* case, in holding that if the State court acquired jurisdiction over the funds in controversy in 1925, it did not lose such jurisdiction after the payment of all claims for which the assets of the corporation had been pledged,—since by Soviet law that portion of the assets of the corporation not required for this purpose had previous to that time become the property of the Soviet Government.

4. In all three cases, in holding that if the State court had previously acquired jurisdiction over the surplus assets of these corporations after payment of all claims for which these assets had been pledged, it did not on November 16, 1933, lose such jurisdiction,—because such surplus became the property of the United States, and because the United States has not consented to be sued respecting such property.

5. In all three cases, in holding that the State court retained exclusive jurisdiction and that it did not on November 16, 1933, lose such jurisdiction over the surplus assets, since the recognition of the Soviet Government by the United States required the State court to give effect to the Soviet decrees terminating the existence of the corporate plaintiff and the directorship of the individual plaintiff in the *Bank of New York* case, terminating the existence of the corporate assignor in the *Manhattan Company* case and the authority of any person to

make an assignment on its behalf, and terminating the existence of the corporation in the *Pink* case and vesting its assets in the Soviet Government.

6. In the *Bank of New York* and *Manhattan Company* cases, in holding that the State court actions are actions *in rem*, within the rule respecting priority of jurisdiction between Federal and State courts.

7. In all three cases, in holding that the actions brought by the United States were actions *in rem* within the rule respecting priority of jurisdiction between Federal and State courts.

8. In all these cases, in holding that the United States was not entitled under Section 24 (1) of the Judicial Code to maintain actions in the Federal court to recover property to which it asserts title.

9. In all three cases, in holding that the Federal court lacked jurisdiction to determine the title of the United States to the surplus funds.

10. In all three cases, in failing to hold that the surplus assets in question became the property of the United States by virtue of the Soviet decrees and the assignment by the Soviet Government to the United States.

11. In all three cases, in affirming the judgment of the District Court.

SUMMARY OF ARGUMENT

I

The funds involved in the instant suits are the residue of deposits which were originally made

for the general benefit and security of domestic policyholders and creditors of Russian insurance companies which were subsequently dissolved. Such claims have been satisfied and the funds should have been turned over to the domiciliary liquidator of the companies.

(a) The State which creates a corporation has the power to destroy such corporation. Likewise, the State which creates a corporation controls the relationship existing between the corporation and its stockholders and creditors. Russia therefore had unquestioned power to dissolve Russian insurance corporations and to destroy their obligations to stockholders and creditors; and, having undertaken so to do, these corporations must be considered as non-existent and their obligations ended.

Where a statute provides that upon dissolution of a corporation its assets should pass to a designated individual, that individual can bring suit in his own name to acquire possession of the assets. In this case, the Russian Government constituted itself the statutory successor of the dissolved Russian insurance companies. We think it clear that by the rule of conflict of laws, the title which Russia acquired to these assets should be recognized in the courts of this country.

(b) Recognition is exclusively an executive act. It is retroactive in its effect and validates all the acts and decrees of the government recognized, from the commencement of its existence. The Soviet Government having been recognized by the United

States on November 16, 1933, it follows that its acts and decrees must be given effect in our courts. Included in the decrees so validated are those which dissolved the Russian insurance corporations, and transferred the property and assets of such corporations to the Russian state.

(c) The recognition of the validity and effect of the decrees of confiscation upon intangible property located in the United States is not opposed to the public policy of the United States. The question involved is primarily one of conflict of laws. The United States is not necessarily seeking to give extraterritorial effect to the Soviet decrees, but asserts that under our own law title to intangibles located in this country depends upon the laws of the domicile of the owner, which in these cases is, admittedly, Russia.

The public policy of this country is not concerned with the manner in which the Russian Government deals with its own corporations, their stockholders and foreign creditors. Where the conflicts law is well settled, this country is not concerned as to the manner in which title passes, so long as it accords with the domiciliary law. (The English courts follow this doctrine.)

The United States has brought suit in its own courts to enforce claims assigned to it in the course of diplomatic negotiations, and as a part of an executive agreement with a foreign government. It would be strange if it could be met with a defense that its claim was against its own public policy.

We think in matters of this nature, the executive branch of the Government determines the public policy of the United States, both because it conducts the foreign relations of the United States, and also because it alone may institute suits on behalf of the sovereign. Obviously, any public policy to be considered in the instant cases would be that of the United States, and not that of the State of New York.

(d) It does not mean that extraterritorial effect, as a legal proposition, is being given to the laws of Russia when our courts apply our own rule of law that title to intangibles located here is to be determined by the laws of Russia, the domicile of the owner. The maxim *mobilia sequuntur personam*, which has been applied by this Court on a number of occasions in respect of intangibles, is here applicable. Therefore, subsequent to the payment of the claims of domestic policyholders and creditors, the courts of New York in the pending actions were undertaking to enforce obligations arising not out of the laws of that State, but out of the laws of Russia, the domicile of the debtor.

(e) In enforcing obligations arising under foreign law, our courts will enforce no greater obligation than exists by that law at the moment suit is brought. Nor can that obligation be enlarged by the fact that the creditor happens to catch his debtor here. Since no enforcible right existed in Russia, at the time the State-court actions were instituted, no right existed here. The mere fact that

assets are located here, does not give rise to a cause of action.

(f) The cases upon which the respondents have heretofore relied are not applicable to the situation in the instant cases.

II

The assignment of the claims in question is contained in an exchange of letters between President Roosevelt and Maxim Litvinov, official representative of the Soviet Government.

(a) By this exchange of letters, Russia, preparatory to final settlement of claims between the two Governments, agreed not to take any steps in pending litigation or to institute new litigation in our courts to enforce claims of that Government against American nationals, and assigned to the United States all sums either due or which might be found to be due it as successor of prior Russian governments, or otherwise, from American nationals. The language of the assignment is broad and inclusive, and should receive a liberal interpretation. Otherwise, an anomalous situation would be presented, wherein the Soviet Government, having free access to our courts, agreed not to invoke the aid of such courts for the purpose of collecting claims which were not assigned. Certainly there was no intent to be read into the assignment that claims of this character are merely to be abandoned.

(b) The interpretation placed upon the assignment by the parties to the agreement should con-

trol. The United States has evidenced its understanding by the institution of these suits, in which action the Soviet Government has acquiesced. The rule applicable to the interpretation of treaties should be applied to this assignment, and it should be interpreted so as to carry into effect the intent of the parties.

III

The instant cases were dismissed upon the ground that the State court had acquired prior jurisdiction of the funds in question, which the court below held to constitute a *res*, that the instant suits were also actions *in rem*, and that therefore the District Court did not have jurisdiction to entertain such suits. If the State courts, however, did not have jurisdiction, or if the instant suits are not *in rem*, or if independently of these facts the United States has a right to resort to its own courts for the purpose of determining its title, the court below should be reversed.

(a) The United States has a right to bring an original action in its own courts for the purpose of determining title to property which it claims. Such jurisdiction was expressly conferred upon the District Courts by Section 24 of the Judicial Code, as amended. We submit that such jurisdiction, expressly conferred, is not defeated merely because a State court may have assumed jurisdiction over the same property in a pending action. Were it otherwise, the United States in many instances might be compelled to appear as a party defendant

in a State court action in order to protect its right to property, the title of which was in litigation in a State court action. As the United States may not appear as a defendant in a State court action, to deny it the right to have its claim adjudicated in the Federal court would be to deprive the Government of its day in court.

(b) The instant suits for an accounting are not suits *in rem,* but are suits *in personam.* This Court has held that an action of a similar character may be maintained notwithstanding the fact that the custody of the *res* was in a State court. Furthermore, we intend that the pending proceedings in the State courts are actions *in personam.*

(c) In order to determine if the State courts possessed jurisdiction of the *res,* it is necessary to determine first if the funds in question were the property of a sovereign. That the funds in question were the property of a foreign sovereign at the time the State court actions were instituted we think is clear. The property and personal rights of a sovereign can not be made subject to litigation in the courts of another nation, unless the sovereign agrees to be a party to such litigation. The Soviet Government did not agree to be a party to any litigation in the State of New York, involving its funds. It follows, therefore, that the State courts had no jurisdiction, even though the Soviet Government was an unrecognized government.

But if it be considered that the State courts could have had jurisdiction of a *res* belonging to an un-

consenting foreign government, because of non-recognition of that government, such jurisdiction was lost on the date of recognition, which was November 16, 1933. It follows, therefore, that at the time of the institution of the instant suits by the United States, the State courts had no jurisdiction over these assets.

We submit, therefore, that the District Court has jurisdiction to determine the claim of the United States to the funds in question.

ARGUMENT

I

THE SOVIET DECREES DISSOLVING THESE RUSSIAN INSURANCE CORPORATIONS, APPROPRIATING THEIR ASSETS, AND TERMINATING THE RIGHTS OF CREDITORS AND STOCKHOLDERS THEREIN, TRANSFERRED TO THE SOVIET GOVERNMENT THE NEW YORK ASSETS OF THESE CORPORATIONS, EXCEPT SUCH ASSETS AS WERE REQUIRED TO RESPOND TO THE CLAIMS OF CREDITORS WITHIN THE STATUTORY TRUST CREATED BY SECTION 27, NEW YORK INSURANCE LAW

In its bills of complaint, the United States has alleged that in 1918 the Russian state, by decrees, dissolved all Russian insurance corporations, including those herein concerned, and appropriated their assets, and the rights of their stockholders in these assets.[9] Since these bills were attacked by

[9] The basic decree herein concerned is the decree of December 1, 1918, set forth at pages 9–10 of the *Record* in *Bank*

motions to dismiss for failure to state a cause of action, the allegations therein must be considered true for purposes of this review.[10]

The United States does not contest the validity of the statutory trusts in the assets of these companies, created by Section 27 of the New York Insurance Law, for the benefit of persons doing busi-

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of New York & Trust Company. The pertinent portions of that decree read as follows:

> (1) Insurance in all its forms, * * * is hereby proclaimed as a State monopoly. * * *
>
> (2) All private insurance companies and organizations (stock and share holding, also mutual) upon issuance of this decree are subject to liquidation; * * *.
>
> (3) For the immediate organization of the insurance business and for the liquidation of insurance institutions which have become the property of the Russian Socialist Federated Soviet Republic, a Commission is established under the Supreme Soviet of National Economy, consisting of representatives of the Supreme Soviet of National Economy, the People's Commissariats of Commerce and Industry, Interior Affairs, the Commissar of Insurance and Fire Prevention, Finances, Labor, and State Control, and of Soviet Insurance Organizations (People's Soviet and Municipal Mutual). * * *
>
> NOTE.—The same Commission is charged with the liquidating of private insurance organizations, all property and assets of which, disclosed at the time of their liquidation, become the property of the Russian Socialist Federated Soviet Republic.
>
> (4) The above-mentioned reorganization and liquidation of existing insurance organizations and institutions shall be accomplished not later than the first day of April, 1919.

Other decrees, relating to the monopolization of all insurance business and the dissolution of private insurance companies, are set forth in the *Record*, *Bank of New York & Trust Co.*, pp. 9, 26, 30, 32.

[10] See *Ansorge* v. *Kane*, 244 N. Y. 395; *Ebsary* v. *Raymond & Whitcomb Co.*, 300 Fed. 685 (W. D. N. Y.).

ness with the New York branches of these companies. It is, however, conceded by the respondents that all persons who asserted claims against these assets as beneficiaries under these trusts have been paid in full.

In the argument hereinbelow the contention that the New York assets of these companies passed to the Soviet Government through operation of Soviet decrees, must be understood not to cover that portion of the assets required to respond to claims of persons within the protection of this statute.

A. THE DISSOLUTION OF A CORPORATION AND THE TRANSFER OF ITS PROPERTY IS GOVERNED BY THE LAW OF THE STATE OF INCORPORATION

1. It is settled that a State which creates a corporation likewise has power to dissolve it. *Oklahoma Gas Co.* v. *Oklahoma*, 273 U. S. 257; *Ewen* v. *American Fidelity Co.*, 271 Fed. 848 (C. C. A. 2d).

It is also settled that foreign jurisdictions must accept the law of the State of incorporation as determinative of the existence of a corporation. *Pendleton* v. *Russell*, 144 U. S. 640.

2. The relationship between a corporation and its creditors and shareholders is governed by the law of the State of incorporation. *Canada Southern Ry.* v. *Gebhard*, 109 U. S. 527; *Royal Arcanum* v. *Green*, 237 U. S. 531; *Modern Woodmen* v. *Mixer*, 267 U. S. 544; *Broderick* v. *Rosner*, 294 U. S. 629.

In *Canada Southern Ry.* v. *Gebhard, supra,* suit was brought in New York by a New York resident to enforce an obligation of a Canadian railroad payable in New York. The debtor pleaded the discharge of the obligation through a "scheme of arrangement" confirmed by the Dominion Legislature, which substituted, for the obligation sued upon, a different obligation. The plaintiff had not assented to the arrangement. It was held that the arrangement was binding on the plaintiff, since the Dominion Government possessed the power to enact a statute changing the obligation of the company, in the absence of any applicable constitutional provision. The Court stated at 109 U. S. 537:

> A corporation "must dwell in the place of its creation, and cannot migrate to another sovereignty" (*Bank of Augusta* v. *Earle,* 13 Pet. 588), though it may do business in all places where its charter allows and the local laws do not forbid. *Railroad* v. *Koontz,* 104 U. S. 12. But wherever it goes for business it carries its charter, as that is the law of its existence (*Relf* v. *Rundel,* 103 U. S. 226), and the charter is the same abroad that it is at home. Whatever disabilities are placed upon the corporation at home it retains abroad, and whatever legislative control it is subjected to at home must be recognized and submitted to by those who deal with it elsewhere. A corporation of one country may be excluded from business in another country (*Paul* v. *Virginia,* 8 Wall. 168), but, if admitted, it must, in the absence of legislation

equivalent to making it a corporation of the latter country, be taken, both by the government and those who deal with it, as a creature of the law of its own country, and subject to all the legislative control and direction that may be properly exercised over it at the place of its creation. Such being the law, it follows that every person who deals with a foreign corporation impliedly subjects himself to such laws of the foreign government, affecting the powers and obligations of the corporation with which he voluntarily contracts, as the known and established policy of that government authorizes. To all intents and purposes, he submits his contract with the corporation to such a policy of the foreign government, and whatever is done by that government in furtherance of that policy which binds those in like situation with himself, who are subjects of the government, in respect to the operation and effect of their contracts with the corporation, will necessarily bind him. He is conclusively presumed to have contracted with a view to such laws of that government, because the corporation must of necessity be controlled by them, and it has no power to contract with a view to any other laws with which they are not in entire harmony. It follows, therefore, that anything done at the legal home of the corporation, under the authority of such laws, which discharges it from liability there, discharges it everywhere.

In *Nashua Savings Bank* v. *Anglo-American Co.*, 189 U. S. 221, it was held that the liability of a United States citizen on an assessment on shares of a British corporation was governed by a British statute. The Court stated, p. 230:

> By subscribing to stock in a foreign corporation, defendant subjected itself to the laws of such foreign country in respect to the powers and obligations of such corporation.

We submit that the application of this doctrine to the facts in these cases forces the conclusion that the title to the assets of these corporations acquired by the Soviet Government through its decrees must be recognized in the courts of the United States.

3. The Soviet decree of December 1, 1918 (R. 9) provides that a commission shall be established to liquidate the insurance corporations whose assets by that decree were appropriated by the Soviet Government.

Our courts are familiar with statutes which provide that upon the dissolution of an insurance corporation an individual designated by such statute takes title to the assets of the property and becomes entitled to bring suit in his own name for the assets, wherever located, of such dissolved corporation. *Clark* v. *Williard*, 292 U. S. 112; *Relfe* v. *Rundle*, 103 U. S. 222; *Martyne* v. *American Fire Insurance*

Co., 216 N. Y. 183; *Cogliano* v. *Ferguson*, 245 Mass. 264; *Bockover* v. *Life Association of America*, 77 Va. 85; *Restatement of the law of Conflict of Laws*, Section 161.[11]

We submit, therefore, that the Soviet Government, through its Liquidation Commission, acquired title to the assets of these corporations wherever located, and that this title must be recognized by the courts of New York.

B. RECOGNITION OPERATES RETROACTIVELY AND ADMITS THE VALIDITY OF THE DECREES OF THE SOVIET GOVERNMENT FROM THE DATE OF THE INCEPTION OF THAT GOVERNMENT

It belongs exclusively to the executive branch of this Government to recognize or to decline to recognize an existing government. *Rose* v. *Himely*, 4 Cranch, 241, 272; *Gelston* v. *Hoyt*, 3 Wheat. 246; *Kennett* v. *Chambers*, 14 How. 38. Such determination when made by the political department of the Government concludes the courts in respect of the legal status of such foreign sovereign or government. *Ricaud* v. *American Metal Co.*, 246 U. S. 304; *Jones* v. *United States*, 137 U. S. 202, 212.

[11] Section 161 provides: "If a statute of the state of incorporation which is in force at the time of the dissolution of a corporation provides that all its assets shall, upon dissolution, pass to a person designated in the statute, the right of such person to the personal property, wherever situated and whether tangible or intangible, will be recognized and given effect by other states, and the designated person can bring suit in any State upon claims due to the corporation."

In *Oetjen* v. *Central Leather Co.*, 246 U. S. 297, 303, this Court stated that

> recognition is retroactive in effect and validates all the actions and conduct of the government so recognized from the commencement of its existence.

And in *Underhill* v. *Hernandez*, 168 U. S. 250, at 252, this Court stated that

> If the party seeking to dislodge the existing government succeeds, and the independence of the government it has set up is recognized, then the acts of such government from the commencement of its existence are regarded as those of an independent nation.

This Court will, of course, take judicial notice of the recognition of the Soviet Government by our Government, on November 16, 1933. *Jones* v. *United States, supra; Underhill* v. *Hernandez, supra; Oetjen* v. *Central Leather Company, supra.* It follows that recognition having been accorded, the Soviet Government must be accepted as the legitimate governmental authority in Russia, and its institutions and laws as an adequate expression of the national will.

In *Dougherty* v. *Equitable Life Assurance Society*, 266 N. Y. 71, 83, the Court of Appeals of New York has aptly summarized the situation in the following language:

> In Russia, where all these insured were, with one or two exceptions, these decrees were laws to be obeyed. They were the laws

> of their government. As to them the Soviet Republic was no body of bandits, confiscating property, but an existing government, carrying out new theories of insurance. If the Russian people, under their Soviet form of government, determined to abolish all private insurance for their citizens and establish a system of social protection by the State, that was their affair, not ours, and however objectionable we may consider the monopolization of all business, including insurance and banking, and the conduct of it thereafter by the government, we at least must admit that other peoples can try the experiment if they desire.
>
> * * * Of course we start with the premise that the United States has now recognized the Soviet Republic, and that the government of Russia is in all respects to be treated as any other power in Europe. At the time the referee heard and decided this case the Soviet Republic had not been recognized by the United States. His conclusions of law and findings of fact were governed by our decisions existing at that time. We, however, must now give full force and effect to the action of our government (*Ricaud* v. *American Metal Co., Ltd.*, 246 U. S. 304; * * *.

The same conclusion was reached by the Court of Appeal of England in *Luther* v. *Sagor* (1921), 3 K. B. 532. That case involved the title to property seized by the Soviet Government within the territory of Russia. When the case was before the lower court, Great Britain had not accorded even

de facto recognition to the Soviet Government. Consequently, the title derived from the seizure by that government was not recognized. However, prior to appeal, Great Britain accorded *de facto* recognition to the Soviet Government. This fact alone was held to require a reversal of the lower court and a recognition of the validity of the title derived from the Soviet Government. The court stated at p. 546:

> * * * Even if it was open to the Courts of this country to consider the morality or justice of the decree of June, 1918, I do not see how the Courts could treat this particular decree otherwise than as the expression by the de facto government of a civilized country of a policy which it considered to be in the best interest of that country. It must be quite immaterial for present purposes that the same views are not entertained by the Government of this country, are repudiated by the vast majority of its citizens, and are not recognized by our laws. * * *

It should be noted that the most recent authoritative decision of the courts of Great Britain likewise supports the contention of the United States in the instant suits. This is the decision of the House of Lords in *Lazard Bros. & Co.* v. *Midland Bank, Ltd.* (1933) A. C. 289. The case involved the validity of a garnishee order absolute obtained by plaintiffs as judgment creditors of a dissolved Russian banking corporation against the Midland

Bank as the debtor of that corporation. The garnishee order was based on a default judgment obtained by plaintiffs against the dissolved Russian corporation on service by mail on the Russian corporation in Russia pursuant to court order. The House of Lords affirmed the judgment of the Court of Appeal reversing the garnishee order on the ground that the order had been obtained by service on a nonexistent defendant. Conflicting evidence as to the continued existence of the Russian corporation subsequent to Soviet decrees purporting to effect its dissolution was reviewed by the court. The gravamen of the decision appears in the following extract from the opinion of Lord Wright: (1933) A. C. at 279:

> English courts have long since recognized as juristic persons corporations established by foreign law in virtue of the fact of their creation and continuance under and by that law. * * * But as the creation depends on the act of the foreign state which created them, the annulment of the act of creation by the same power will involve the dissolution and non-existence of the corporation in the eyes of English law. The will of the sovereign authority which created it can also destroy it. English law will equally recognize the one, as the other, fact.

Lord Wright in his opinion distinguishes and in effect overrules certain earlier decisions of the House of Lords in which the continued existence in Great Britain of dissolved Russian corporations

appears to have been found, on the ground that the evidence on which those decisions were based was not so complete as the evidence before the House of Lords in the *Lazard* case.[12]

Since recognition of the Soviet Government by the United States Government validates retroactively all acts of that government since its accession to power (*Oetjen* v. *Central Leather Co., supra; Ricaud* v. *American Metal Co., supra*), our courts must recognize as legally effective the dissolution of these Russian corporations by the law of the creating country. *Dougherty* v. *Equitable Life, supra; Lazard Bros. & Co.* v. *Midland Bank, supra;* see *Issaia* v. *Russo Asiatic Bank,* 266 N. Y. 37, 43.

It therefore remains only to determine whether the application of those decrees to the New York assets of these corporations which is required by rules of conflict of laws or of comity, can be avoided on any theory of public policy.[13]

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[12] Among the cases distinguished are *Employers' Liability Assurance Corporation, Ltd.* v. *Sedgwick, Collins and Company, Ltd.* (1927) A. C. 95; *Russian Commercial & Industrial Bank* v. *Comptoir d'Escompte de Mulhouse* (1925) A. C. 112, and *Banque Internationale de Commerce de Petrograd* v. *Goukassow* (1925) A. C. 150, which were relied upon by respondents in their briefs below. See also, in accord with the *Lazard* case, *In re Russian Bank for Foreign Trade* (1933) 1 Ch. Div. 745.

[13] The respondent in the *Manhattan Company* case has asserted (*Manhattan Company Record*, pp. 39–42) certain administrative "circulars" of the Soviet Government, which that respondent claims restrict the application of the decree

C. RUSSIAN DECREES DISSOLVING RUSSIAN INSURANCE CORPORATIONS AND TRANSFERRING THEIR INTANGIBLE PERSONAL PROPERTY TO THE RUSSIAN STATE, ARE NOT OPPOSED TO THE PUBLIC POLICY OF THE UNITED STATES

It is to be noted in the instant cases that the claims of all domestic creditors and policyholders protected by Section 27 of the New York Insurance Law have been satisfied. That being accomplished, we submit that there is no room for the application of the doctrine of public policy.

The District Court held that the application of these decrees would have the effect of giving extra-territorial force to Soviet decrees of confiscation, and that this would be contrary to the public policy of the United States. The court below failed to adopt the opinion of the District Judge and the grounds on which he dismissed the bills of complaint, and moreover failed to state that there was anything opposed to our public policy in giving effect to the decrees which operated upon Russian corporations and their stockholders.

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of December 1, 1918. That issue, which may arise at the trial, is not pertinent herein, because the respondents, by their motions to dismiss, are deemed to have admitted all material allegations in the bills of complaint. In any event, these "circulars" were considered at length and passed upon in *Perry* v. *Equitable Life Assurance Society*, 45 T. L. R. 468 (K. B. 1929), wherein it was held that they did not constitute binding declarations of Russian law, and therefore did not restrict the application of the decree of December 1, 1918.

The respondents, both in the court below and in their briefs in opposition to the petition for writs of certiorari in the instant cases, vigorously contended that the United States is seeking to give extra-territorial effect to confiscatory Russian decrees in defiance of the public policy of the United States. We think an examination of the position of the Government in this respect will fail to support the contention of the respondents.

1. The question, as we view it, is primarily one of conflict of laws, and in the final analysis depends upon the rule of conflicts which the courts of this nation have adopted, as applied to surplus assets of a dissolved foreign corporation.

In *Restatement of the law of Conflict of Laws,* Section 1, it is stated that

> no state can make a law which by its own force is operative in another state; the only law in force in a sovereign state is its own law, but by the law of each state rights and other interests in that state may in certain cases depend upon the law in force in some other state or states.

This principle finds application in determining the transfer of title to intangibles. In contending that the United States has acquired title to these particular funds by virtue of Soviet decrees, the United States is not necessarily seeking to give extra-territorial effect to these decrees, but is, on the other hand, contending that as between a Russian corporation and the Russian Government the title to in-

tangibles formerly owned by a Russian corporation, wherever situated, will depend upon the laws of Russia.

Certainly the public policy of this country is not concerned with the manner in which the Russian Government deals with its own corporations and their property. These are matters into which no other state has a right or reason to inquire. *Dougherty* v. *Equitable Life Assurance Society, supra.*

We think it clear that where the conflicts law in respect of title is settled, our courts are not concerned with the fact that the foreign title was acquired by confiscation. In *Oetjen* v. *Central Leather Company, supra,* and *Ricaud* v. *American Metal Co., supra,* the question before this Court involved the title to tangible personal property admittedly confiscated by the Government of Mexico. In deciding those cases, this Court looked to the conflicts law which was stated to be that title to tangible personal property passed in accordance with the laws of the situs of such property, and that being so, the manner in which the title passed was immaterial. In the *Oetjen* case (246 U. S. 297, 303), this Court stated:

> To these principles we must add that: "Every sovereign State is bound to respect the independence of every other sovereign State, and *the courts of one country will not sit in judgment on the acts of the government of another done within its own territory.* Redress of grievances by reason of such acts must be obtained through the

means open to be availed of by sovereign powers as between themselves." *Underhill* v. *Hernandez,* 168 U. S. 250, 253; *American Banana Co.* v. *United Fruit Co.,* 213 U. S. 347.

Applying these principles of law to the case at bar, we have a duly commissioned military commander of what must be accepted as the legitimate government of Mexico, in the progress of a revolution, and when conducting active independent operations, seizing and selling in Mexico, as a military contribution, the property in controversy, at the time owned and in the possession of a citizen of Mexico, the assignor of the plaintiff in error. Plainly this was the action, in Mexico, of the legitimate Mexican government when dealing with a Mexican citizen, and, as we have seen, for the soundest reasons, and upon repeated decisions of this court such action is not subject to reexamination and modification by the courts of this country.

The principle that *the conduct of one independent government cannot be successfully questioned in the courts of another* is as applicable to a case involving the title to property brought within the custody of a court, such as we have here, as it was held to be to the cases cited, in which claims for damages were based upon acts done in a foreign country, for it rests at last upon the highest consideration of international comity and expediency. *To permit the validity of the acts of one sovereign State to be re-*

> *examined and perhaps condemned by the courts of another would very certainly "imperil the amicable relations between governments and vex the peace of nations."* (Italics ours.)

We submit, therefore, that the fact that title passes by virtue of confiscatory decrees is a matter of no concern when our courts have adopted a rule of conflicts within which such legislation clearly falls.

2. Considerations of local public policy may not be invoked to subject to the jurisdiction of a local court the property of a foreign sovereign.

This Court has held that a substantive *defense* may not be disregarded on the ground of local policy. In *Bradford Electric Co.* v. *Clapper,* 286 U. S. 145, the Court said (p. 160):

> * * * But the Company is in a position different from that of a plaintiff who seeks to enforce a cause of action conferred by the laws of another State. The right which it claims should be given effect is set up by way of defense to an asserted liability; and to a defense different considerations apply. Compare *Home Ins. Co.* v. *Dick,* 281 U. S. 397, 407, 408. A State may, on occasion, decline to enforce a foreign cause of action. In so doing, it merely denies a remedy, leaving unimpaired the plaintiff's substantive right, so that he is free to enforce it elsewhere. But to refuse to give effect to a substantive defense under the applicable law of another State, as under

> the circumstances here presented, subjects the defendant to irremediable liability. This may not be done.

If the courts of New York, because they are not sympathetic with the manner in which the Soviet Government acquired title to these assets, are at liberty to place them beyond the reach of the United States by distributing them to creditors and stockholders whose claims are not based on New York transactions, the result will be to subject the United States, the assignee of the Soviet Government, to irremediable loss. These assets are entitled to the protection of immunity from suit (enjoyed by both the United States Government and the Soviet Government) and, on grounds of international comity, should not be made subject to the varying notions of public policy which may be entertained by local tribunals.

The contention of the respondents that the claim which the United States is asserting may not be allowed because to do so would violate the public policy of the United States is incongruous. This sets up as a defense that the sovereign may not succeed because its action is opposed to its own public policy. It is not denied that the United States is asserting a claim which it has acquired by the exercise of its sovereign power over its own foreign relations. Whatever may be said of the public policy of the United States, when there is involved a dispute between private parties, we think it clear

that no question of public policy can arise when the sovereign asserts the claim.

The executive branch of the Government, by the Chief Executive, has, in effect, determined the public policy of the United States with regard to the acts and decrees of the Soviet Government; and that declaration of policy has been tacitly approved by the legislative branch of the Government.[14] If local courts may, as each sees fit, override the declared national policy by refusing, in effect, to carry out that policy, the consequences might be indeed serious. As was said by Chief Justice Taney in *Doe v. Braden,* 16 How. 635, 656:

> * * * it would be impossible for the executive department of the government to conduct our foreign relations with any advantage to the country, and fulfill the duties which the Constitution has imposed upon it, if every court in the country was authorized to inquire and decide whether the person who ratified the treaty on behalf of a foreign nation had the power, by its constitution and laws, to make the engagements into which he entered.

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[14] See Congressional Record, Vol. 78 (Jan. 11, 1934), pp. 460, 461, where, in the debate in the State, it is said that valid agreements have been "reached between the President and the representative of the Russian Soviet Union upon which the recognition of the Soviet Government is based," founded upon the exclusively "Executive function and prerogative to recognize foreign governments," and there was mentioned "the basis of contractual relationship upon which recognition has been granted * * *."

That language is equally apt in the present situation. It would be impossible for the Executive to conduct our foreign relations if every local court was authorized to superimpose its views as to morals and public policy with respect to the title of a foreign sovereign to property which by a formal agreement it has assigned to the Government of the United States.

Likewise, this Court stated in *Terlinden* v. *Ames*, 184 U. S. 270, at p. 290:

> The decisions of the Executive Department in matters of extradition, within its own sphere, and in accordance with the Constitution, are not open to judicial revision, and it results that where the proceedings for extradition, regularly and constitutionally taken under the acts of Congress, are pending, they cannot be put an end to by writs of habeas corpus.

The acquisition of property by assignment from a foreign power is, like extradition, a matter peculiarly within the sphere of the executive department.

As was said by Lord Scrutton, L. J., in *Luther* v. *Sagor* (1921), 3 K. B. 532, 558–559:

> * * * But it appears a serious breach of international comity, if a state is recognized as a sovereign independent state, to postulate that its legislation is "contrary to essential principles of justice and morality." Such an allegation might well with a susceptible foreign government become a *casus*

> *belli;* and should in my view be the action of the Sovereign through his ministers, and not of the judges in reference to a state which their Sovereign has recognized.

Again, at p. 559:

> * * * I do not feel able to come to the conclusion that the legislation of a state recognized by my Sovereign as an independent sovereign state is so contrary to moral principle that the judges ought not to recognize it. The responsibility for recognition or nonrecognition with the consequences of each rests on the political advisers of the Sovereign and not on the judges.

One of the respondents suggests that the public policy to be considered is that of the State of New York and not that of the United States. This statement, we believe, in the light of the fact that there is here involved negotiations between sovereigns, carries with it its own refutation. The United States, in the conduct of its foreign relations, cannot be made subject to forty-eight different views of public policy. In that respect, its own public policy is and must be supreme.

D. THE PROPERTY HERE INVOLVED WAS LEGALLY SITUATED IN RUSSIA AND ITS TRANSFER WAS THEREFORE BY RUSSIAN LAW

If, and in so far as, there is involved herein any question of giving extraterritorial effect to the decrees of the Soviet Government, it is predicated upon the assumption that the New York courts and

the courts hereinbelow were necessarily dealing with property legally situated within the State of New York. We submit that in determining the issues herein, the property here in question must be deemed situated in Russia.

The deposits of the insurance companies in the State of New York consisted primarily of bonds evidencing municipal, State, or Federal obligations. As such they were, of course, intangibles. Applying the doctrine of *mobilia sequuntur personam,* it follows that these intangibles had their situs at the domicile of the former owners, the Russian insurance corporations, and that, therefore, they were legally under the control of Russia at the time the corporations were terminated, and were subject to transfer to the successor of the dissolved corporations in accordance with the law of Russia. *Blodgett* v. *Silberman,* 277 U. S. 1.

Intangibles are held to include municipal obligations (*Farmers Loan Co.* v. *Minnesota,* 280 U. S. 204), stock certificates, United States bonds and Treasury certificates of indebtedness, savings bank accounts, and life insurance policies. *Blodgett* v. *Silberman,* 277 U. S. 1, *supra.* The Court, in that case, stated (p. 9):

> At common law the maxim "*mobilia sequuntur personam*" applied. There has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to in-

> tangible property, including choses in action, without regard to whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the State of the domicil or elsewhere, and is so fully sustained by cases in this and other courts, that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not.

Likewise, this Court, in *Helvering* v. *Stockholms, etc. Bank,* 293 U. S. 84, 92, said:

> Thus, intangible personal property has been held to have a situs at the domicile of the owner, although intangibles ordinarily have no actual situs and the paper evidence of their existence may be elsewhere. *First National Bank* v. *Maine,* 284 U. S. 312, 328–329.

While these assets might be deemed to have formerly had a situs in New York by virtue of Section 27 of the New York Insurance Law, that section lost its applicability to them when the claims under this statute were paid. Thereafter, the surplus of these funds must be deemed, according to the usual rule, to have its situs at the domicile of the corporation.

E. THE RIGHTS HEREIN ASSERTED ON BEHALF OF ADVERSE CLAIMANTS HAD A SITUS AT THE DOMICILE OF THE DEBTOR, AND WERE THEREFORE GOVERNED BY RUSSIAN LAW

Respondents contend that the courts of New York must be left undisturbed in their adjudica-

tion of the rights in these funds of creditors and stockholders not within the protection of Section 27 of the New York Insurance Law, and that those claims must be permitted to proceed to judgment. We submit, however, that those claims had their situs at the domicile of the debtor, the Russian insurance corporation, and are not maintainable in New York after the dissolution of the corporation in its domiciliary State. *Ewen* v. *American Fidelity Co., supra.* These claims arose either out of transactions in no way connected with the New York business of these corporations, or out of a status as shareholder in these corporations created by Russian law.[15] Clearly such claims are governed by Russian law, and when Russian law declared that the assets of these corporations, through their absorption into the assets of the Russian state, might not respond to such claims, the claims became unenforceable everywhere. In *Deutsche Bank* v. *Humphrey,* 272 U. S. 517, this Court, in declining to give greater effect in this country to an obligation created by German law than was required by the law which created it, stated at page 519:

> A suit in this country is based upon an obligation existing under the foreign law at

[15] Some of the claims arose out of contracts which were purported to have been made on behalf of the Russian corporations after their dissolution. Clearly, however, after this dissolution no persons possessed authority to make contracts which could form the basis of a claim against assets which had previously passed to the Soviet Government.

> the time when the suit is brought, and the obligation is not enlarged by the fact that the creditor happens to be able to catch his debtor here.

A situation somewhat similar to the one here involved was before this Court in *Zimmerman* v. *Sutherland,* 274 U. S. 253. In that case an alleged creditor of an Austrian bank sought to reach in satisfaction of the debt property of the debtor in the hands of the Alien Property Custodian. The debt was created by Austrian law and had been discharged by Austrian law. In denying relief to the creditor, this Court stated at p. 255:

> The only primary obligation was that created by the law of Austria-Hungary and if by reason of an attachment of property or otherwise the courts of the United States also gave a remedy the only thing that they could do with justice was to enforce the obligation as it stood, not to substitute something else which seemed to them about fair.

As was stated by the New York Court of Appeals, in *Russian Reinsurance Co.* v. *Stoddard,* 240 N. Y. 149, 167, in passing upon the right of the Russian Reinsurance Company to recover its surplus assets in New York:

> We have pointed out that the existence of the corporate plaintiff, its right to sue, the authority of the directors and the devolution of title to its assets must all be determined by Russian law.

In *Dougherty* v. *Equitable Life Assurance Society,* 266 N. Y. 71, 87, the same court, in declaring that insurance policies performable in Russia which had been cancelled by Russian law could not be sued upon in New York, stated:

> The plaintiffs seek to make a distinction between the seizure of tangible property (*Salimoff* and *Sagor* cases) and the disposition and canceling of rights to intangible property. We can see no distinction in this instance. The right to collect money by a Russian citizen on a contract to be interpreted according to Russian law is no different in this respect than the right to tangible property in Russia or the possession thereof. Both rights are dependent upon the law of Russia.

Therefore, since the adverse claimants had no enforceable right in Russia when the State suits were instituted, no right existed here or elsewhere.

But whether these funds and the claims against them be deemed to have a situs in New York or a situs in Russia, it is clear that the basic act underlying this litigation is the destruction of the legal identity of these corporations. This was an act within the legal competence of the Government of Russia and performed in Russia. Therefore, our courts, according to the doctrine of the *Oetjen* and *Ricaud* cases, must accept and give effect to the consequences flowing from that act.

F. THE CASES UPON WHICH THE RESPONDENTS HAVE HERETOFORE RELIED, AS AUTHORITY FOR THE PROPOSITION THAT THE SOVIET DECREES OF CONFISCATION ARE NOT EFFECTIVE TO TRANSFER TITLE TO INTANGIBLES LOCATED IN NEW YORK, ARE NOT APPLICABLE

All the cases cited by the respondents for the purpose of supporting their contention that no extraterritorial effect will be given to Soviet decrees of confiscation, because such decrees are contrary to the public policy of the forum, lack an essential element which is present in this case. Here, the sovereign itself is bringing the action. We perceive nothing in any of the cases cited which could be taken as authority for the proposition that the courts can declare the enforcement of such decrees to be contrary to the public policy of a sovereign where the sovereign itself is seeking to assert a claim founded upon such decrees.

The following decisions of this Court have been relied upon by respondents herein:

Russian Volunteer Fleet v. *United States,* 282 U. S. 481. That case was not, as implied in the briefs of appellees in the lower court, a holding to the effect that Soviet decrees dissolving Russian corporations are contrary to the public policy of the United States. The issue on that appeal was the jurisdiction of the Court of Claims to entertain an action by the Russian Volunteer Fleet against the United States to recover compensation for the requisitioning by the United States, under the Emergency Shipping Act of June 15, 1917, of cer-

tain contracts for the building of vessels. It was urged that since American citizens might not sue for similar compensation in the courts of the Soviet Union on account of non-recognition of the Soviet Union by the United States, Section 155 of the Judicial Code prevented an action by the Russian Volunteer Fleet in the Court of Claims. It was held that the authority to sue in the Court of Claims for such compensation conferred by the Emergency Shipping Act of June 15, 1917, being express authority, rendered Section 155 of the Judicial Code inapplicable to this particular action, and hence that an action might be brought by the Russian Volunteer Fleet in the Court of Claims. The language of the opinion was carefully confined to the prescise issue before the Court.

Second Russian Insurance Co. v. *Miller,* 268 U. S. 552. In this case it was held that a contract between a Russian national and a German national to be performed in Germany and in New York, which contract was valid according to both German law and New York law, could not be abrogated by a Russian ukase which purported to abrogate all contracts between Russian nationals and enemy aliens. The Court recognized, however, that this ukase did not purport to regulate the relations between a corporation and its creditors and stockholders. On the other hand, the Court cited with approval *Canada Southern Ry. Co.* v. *Gebhardt,* 109 U. S. 527, relied upon above, in the following language at 268 U. S. 560:

> * * * Nor does *Canada Southern Ry. Co.* v. *Gebhardt,* 109 U. S. 527, relied upon by appellant, support the contention. That case only laid down the doctrine recently affirmed by this Court (*Modern Woodmen of America* v. *Mixer,* 267 U. S. 544) that the legal relations of the members of a corporation to the corporation and to each other must be regulated and controlled by the law of the jurisdiction in which the corporation is organized, and it extended the doctrine so as to make it applicable to mortgage security holders having a common interest in the corporate property.

Certainly, *Second Russian Insurance Co.* v. *Miller, supra,* does not stand for the proposition that Soviet decrees affecting the dissolution of a Russian corporation will not be recognized in the courts of the United States.

Baglin v. *Cusenier Co.,* 221 U. S. 580, involved the right of a French statutory liquidator of the property of the Order of Carthusian Monks to sell in the United States under the trade name "Chartreuse", liqueur manufactured by him in France in competition with liqueur similarly named manufactured by these monks in Spain after their expulsion from France. Prior to their expulsion the monks had registered the name "Chartreuse" in the United States (see *Bauer* v. *Order of Carthusian Monks,* 120 Fed. 78). For this reason and also because it had been held that by French law the trade marks abroad had not passed to the statutory

liquidator, it was held that the monks were entitled to the continued use of the trade name "Chartreuse" in the United States. This decision has no bearing on the effect of Soviet decrees which have had for their object the nationalization of Russian corporations and the absorption into the assets of the Soviet state of all property of such corporations wherever situated.

A number of cases of the Court of Appeals of New York have been cited as sustaining the position of the respondents. Among these are *Sokoloff* v. *National City Bank,* 239 N. Y. 158; *Joint Stock Co.* v. *National City Bank,* 240 N. Y. 368; *Petrogradsky M. K. Bank* v. *National City Bank,* 253 N. Y. 23, certiorari denied, 282 U. S. 878; *Vladikavkazsky Railway Co.* v. *New York Trust Co.,* 263 N. Y. 369. With the exception of the *Vladikavkazsky Railway* case, all of these cases were decided before recognition of the Soviet Government, and the language in them, to the general effect that Soviet decrees will not be recognized in courts of New York, must be considered in that light.

The *Vladikavkazsky Railway* case involved a deposit in a New York bank made by a Russian railway corporation for the purpose of paying interest on bonds issued by that corporation in the United States. The bank denied liability on the ground that the plaintiff had lost its corporate identity by Russian law. This defense, if successful, would have brought about the result that

the bank would retain a deposit to which, as between the parties to that suit, it clearly was not entitled. It is submitted that the rationale of this decision, as well as of the previous decisions of the New York Court of Appeals, in which it was held that Russian corporations might maintain actions in New York despite their dissolution in Russia, is to be found in the following language at page 378:

> In the case at bar, as in the other Russian cases which came to this court before the recognition of the present Russian government, the practical question was and is, shall the law compel a debtor in this State to pay its debt or permit it to hold the property of its creditor indefinitely? This court definitely answered the question by deciding that although the corporation in question was extinguished in its homeland and there dead in the eyes of the law, it continued its existence as "a juristic person with capacity to sue" in this State (*Petrogradsky M. K. Bank* v. *National City Bank, supra*). The deposit was made in New York city, the home of the bank; that is where the contract obligation was created and where it is by its terms to be performed, entirely outside Russian jurisdiction.

We submit further that, even apart from the factor of recognition, these decisions of the New York Court of Appeals are not authority for the present contention of the respondents that Soviet

decrees cannot be given effect by New York courts on grounds of public policy, for two reasons:

First, each of them involved a contract made in New York and performable in New York, obligations over which the New York courts had jurisdiction. To these contracts the New York courts might apply New York law, irrespective of the nationality of the creditor or of the creditor's status according to the law of its domicile.

Second, each of them involved a controversy between a private claimant of Russian nationality and a New York bank. No statutory successor of the Russian claimant asserted a claim to the deposit. There is no intimation in the court's language in any of the cases as to what would have been the result if the Soviet Government as statutory successor, had claimed the deposit adversely to the private claimant.

In none of these cases was it stated that the New York courts had jurisdiction of the controversy merely because the assets involved happened to be situated in New York. In the decision below, however, the claim of the United States, as the assignee of the statutory successor of a Russian corporation, has been denied on the sole ground that these assets are in the custody of the New York State court for a special purpose, namely, for distribution to persons asserting claims, although not within the protection of Section 27 of the New York Insurance Law. We submit that previous New York decisions

have not, as asserted by respondents, laid down a rule that creditors and stockholders of Russian corporations, i. e., those not within the protection of the above statute, may reach New York assets of these corporations despite the extinguishment of these claims by Russian law. On the contrary, in *Dougherty* v. *Equitable Life Assurance Society, supra,* the latest decision of the New York Court of Appeals on this question, the court declined jurisdiction of a controversy arising out of contracts made in Russia and performable in Russia and governed by Russian law, even though it had jurisdiction of the parties and over assets of the debtor, a New York corporation, and even though such assets were pledged for the exact fulfillment of the contractual obligations.

The decisions of the New York Court of Appeals [16] in 1931, on which respondents rely to establish the jurisdiction of the New York courts to retain possession of these assets against the adverse claim of the United States as assignee of the statutory successor of these corporations, do not lay down a general rule. They were addressed to a particular situation. The Soviet Government was then unrecognized and had been denied access to the courts of New York. *R. S. F. S. R. Co.* v.

[16] *Matter of People* (*Russian Reinsurance Co.*), *supra; Matter of People* (*Northern Insurance Co. of Moscow*), *supra;* see also *Matter of People* (*Northern Insurance Co. of Moscow*), 262 N. Y. 453.

Cibrario, 235 N. Y. 255; *The Penza*, 277 Fed. 91 (E. D. N. Y.). The New York court was confronted with the problem of whether it should affirm the disposition of these assets approved by the Appellate Division, namely, that they should be held until a government in Russia should be recognized by the United States,[17] or whether it should permit persons not within the protection of Section 27 of the New York Insurance Law to reach these assets. It chose the latter alternative, not necessarily because it desired to afford protection to the claims of such persons[18] (the validity of the claims was to be determined by further litigation), but because it was unwilling to permit an indefinite postponement of a problem which had caused the New York courts vexation for many years. Since these decisions, however, the Soviet Government has been recognized, its legal status as successor to the rights of the corporations is recognized, and its claim to these funds has been asserted through its assignee. That fact completely changes the situation with respect to these funds, as compared to the situation which was presented to the New York Court of Appeals in 1931, and

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[17] *Matter of People* (*Northern Insurance Co.*), 299 App. Div. 637.

[18] It had been held in several previous cases that the claims of such persons were not cognizable by New York courts. *Martyne* v. *American Fire Insurance Co.*, *supra*; *Matter of People* (*City Equitable Life Ins. Co.*), *supra*; *Matter of People* (*Norske Lloyd Ins. Co.*), *supra*.

consequently makes the particular decisions of that court no longer applicable as a reason for upholding the continued jurisdiction of the New York courts over these assets.

In respect of other cases cited from foreign jurisdictions, we think that, on close analysis, it will be found that much of the language in those cases was unnecessary to the decision of the actual question before the courts, and that it does not apply to the specific problem herein. The foreign cases referred to concerned the protection of rights acquired locally, such as the payment of debts, the enforcement of contracts, and the right of succession under the local laws, all of which come properly under the operation of well-established rules of conflict of laws.

We submit, therefore, that there is nothing in the decisions upon which the respondents have relied which in any manner is decisive of the question here presented.

In concluding the first point of this brief, we again call attention to the fact that we are herein concerned only with the surplus funds remaining after the claims of our own domestic creditors and policyholders have been satisfied, pursuant to Section 27 of the New York Insurance Law, which required a special deposit of these funds in order to protect persons who transacted business with these companies in the United States. Ownership of

these surplus funds is herein asserted by the United States, as assignee of the Soviet Government. The Soviet Government is a duly recognized foreign sovereign, and as such its decrees and acts, relating to property and rights over which it has jurisdiction, are given full force and effect by our Government and by our courts. Consequently, our courts must take cognizance of the title acquired by the Soviet Government, in and to the funds here in question, by virtue of the decrees of that government whereby these Russian corporations were dissolved and all their assets were taken over by that government. As this Court and other courts have repeatedly stated, we are in no way concerned with the wisdom or justice of that appropriation by the Soviet Government; that is purely a matter as between the Soviet Government and its own nationals. The question, therefore, becomes primarily one of conflict of laws. It is a well-settled principle of American law that title to intangibles is governed by the law of the domicile of the owner. In light of that principle, we look to the law of the domicile of these Russian corporations, which admittedly was Russia, and there we find that by Russian law title to the funds here in question was duly acquired by the Soviet Government.

In the succeeding point of this brief we show that the title of the Soviet Government was duly assigned to the United States.

II

THE FUNDS HELD BY THE RESPONDENTS WERE TRANSFERRED TO THE UNITED STATES BY THE LITVINOFF ASSIGNMENT

The assignment is contained in an exchange of letters between President Roosevelt and Maxim Litvinoff, People's Commissar for Foreign Affairs, of the Soviet Government. The trial court ruled that the assignment did not cover the claims herein asserted by the United States. The Circuit Court of Appeals held that for the purpose of the instant cases, the assignment was sufficient to transmit to the United States whatever rights the Russian Government had to these deposits. The respondents, however, assert that the funds involved in the cases at bar fall outside the scope of the assignment.

A. THE LANGUAGE OF THE ASSIGNMENT COVERS THESE CLAIMS

The assignment states [19] that the Soviet Government, preparatory to a final settlement of claims between the two governments and the claims of their nationals, agrees that it will not take any steps in any pending litigation or institute any new litigation to obtain the amounts admitted to be due or that may be found to be due the Soviet

[19] The text of the assignment is set forth in the Appendix to this brief, p. 90.

Government as the successor of prior governments of Russia, "*or otherwise*", from American nationals, and assigns all such amounts to the United States. The assignment then states that the Soviet Government further agrees, preparatory to the final settlement mentioned, not to make any claims with respect to judgments by American courts or acts done or settlements made by or with the United States or its nationals relating to any property of any government of Russia or the nationals thereof.

It is clear from the language of the assignment, which is broad and inclusive, that it was intended to transfer any claim or amount due to the Soviet Government from American nationals. The funds held by the respondents are amounts due from the respondents, American nationals, to the Soviet Government.

We think the purpose and scope of the assignment were aptly summarized by Judge Manton, who in his dissenting opinion in the court below stated (R. 95):

> The ultimate design of the two countries in executing this assignment was to transfer "the claims and counterclaims between the governments of the Union of Soviet Socialist Republics and the United States of America, and the claims of their nationals," to the broad plane of diplomacy, and by placing those claims beyond the reach of vexatious judicial action, to facilitate at one stroke, the adjustment of the delicate points

at issue between the two countries. No narrow or strained construction of that instrument is permissible under these circumstances.

The agreement of the Soviet Government, a friendly power with free access to the courts of the United States, not to sue in our courts to recover the amounts due it, requires the interpretation that *all* claims were assigned to the assignee. Any other interpretation would imply the abandonment of claims not assigned, and certainly that was not intended. The deliberately broad language of the assignment should be given effect. There is no reason to except from the operation of the assignment any particular claims of the Soviet Government.

The District Court stated that the funds were not due the Soviet Government from American nationals, but that the funds belonged to the dissolved insurance corporations, that the respondents were merely custodians of the funds, and that the assignment refers only to such claims wherein an American national is directly the debtor of the Russian Government. We contend that the District Court's interpretation is incorrect. The assignment applies equally to claims of the Soviet Government, as successor of its dissolved corporations, which arise out of relations between the dissolved corporations and American nationals.

Specific reference in the assignment to the claim of the Russian Volunteer Fleet against the United

States does not indicate, as the District Court suggested, that if such funds as those held by the respondents were to be assigned, a specific reference to such funds would have been required. The claim of the Russian Volunteer Fleet was included in terms for several reasons: First, because the claim was against the United States directly, and was not covered by the general language of the assignment of claims against American nationals; second, because in the litigation in the Court of Claims it was denied that the Russian Volunteer Fleet was a government instrumentality; hence it was necessary to specify that the Soviet Government claimed through its instrumentality, the Russian Volunteer Fleet.

No more specific reference to the particular claims in dispute should be required than should be required for any other claims of the Soviet Government against American nationals. The character of the respondents as custodians of the funds does not remove them from the position of American nationals against whom claims exist within the language of the assignment.

B. THE INTERPRETATION ADOPTED BY THE SOVEREIGN PARTIES TO THE ASSIGNMENT SHOULD BE ACCEPTED BY THE COURT

The interpretation of the assignment to include claims to these funds of the Soviet Government, as made by the governments of Russia and the United States, is conclusive of the intention of the

parties to the assignment. The institution of these suits by the assignee, a fact well known to the assignor is ample indication of the intent of the parties to the assignment. Consequently, the construction adopted by the parties should be accepted, even if the language of the assignment were ambiguous, which we contend is not the fact.

In *State of Russia* v. *National City Bank of New York,* 69 F. (2d) 44, 48 (C. C. A. 2d), the court considered the scope of the Litvinoff assignment and stated that *"it is apparent that the intent was to assign all the claims of the Soviet government to the United States."*

The assignment, although not a treaty in the formal sense, is, as to the United States, an executive agreement with a foreign sovereign, and constitutes one of the conditions upon which recognition of the Soviet Government was granted. *State of Russia* v. *National City Bank, supra.* The rules applicable to the interpretation of treaties should be applied to the interpretation of such an executive agreement, not couched in the technical language of a formal assignment, but contained in the diplomatic correspondence of recognition.

Liberal construction of treaties is to be preferred. The construction adopted by the political department of the Government should be accepted.[20]

[20] If this Court is not convinced that the assignment includes this claim, by the language of the assignment and the interpretation given by the parties, and by the institution of these suits, it may ascertain the fact, which is a matter of

Factor v. *Laubenheimer*, 290 U. S. 276, 293–295; *Neilsen* v. *Johnson*, 279 U. S. 47, 52; *Tucker* v. *Alexandroff*, 183 U. S. 427, 437; *In re Ross*, 140 U. S. 453, 475; *Geofroy* v. *Riggs*, 133 U. S. 258, 270.

There can be no doubt of the power of Mr. Litvinoff to deal with property of the Soviet Union, whether its *situs* be found to be in the Soviet Union or in the United States. The assignment made by Mr. Litvinoff was a valid assignment, which he was entirely competent to effect. International law attributes to a Minister for Foreign Affairs certain functions, and the validity of his exercise of these functions cannot be questioned abroad. This view has recently been taken by the Permanent Court of International Justice in its judgment of April 5, 1935, with reference to the "Legal Status of Eastern Greenland." Publications of the Permanent Court of International Justice, Series A/B, No. 53. In that case, a declaration was made by Mr. Ihlen, Norwegian Minister of Foreign Affairs, with reference to the policy of the Norwegian Government. On page 71 of the report, the following statement is made:

> The Court considers it beyond all dispute that a reply of this nature given by the Minister for Foreign Affairs on behalf of his

executive agreement between the governments of the United States and Russia, by addressing an inquiry to the State Department. *Underhill* v. *Hernandez*, 168 U. S. 250, 253; *Jones* v. *United States*, 137 U. S. 202, 216; *In re Baiz*, 135 U. S. 403; *Ex parte Hitz*, 111 U. S. 766; *Universal Adjustment Corp.* v. *Midland Bank*, 281 Mass. 303, 184 N. E. 152.

Government in response to a request by the diplomatic representative of a foreign Power, in regard to a question falling within his province, is binding upon the country to which the Minister belongs.

III

The Federal Court Has Jurisdiction of the Instant Actions

The court below, in affirming the order dismissing the bills of complaint of the United States for insufficiency, has held that the District Court did not have jurisdiction to entertain the instant suits, on the ground that the New York State courts had acquired jurisdiction *in rem* of the funds in question, and that the suits by the United States in the Federal court were suits *in rem,* and that hence the Federal court must yield to the State court which had previously acquired jurisdiction. We submit that the ruling of the court below is erroneous. The doctrine of priority of jurisdiction is applicable only where one court has assumed jurisdiction of a *res* and another court thereafter attempts to deal with the *res* in a manner which would oust the prior jurisdiction of the other court. We submit that the doctrine is not applicable herein, for the following reasons:

(a) The Federal court has jurisdiction of these suits, by virtue of Section 24 (1) of the Judicial Code, which confers original jurisdiction upon the

District Courts of the United States to entertain suits brought by the United States.

(b) Irrespective of the original jurisdiction of the suits conferred upon the District Court, the doctrine of priority of jurisdiction is not applicable herein because these suits by the United States are essentially *in personam*, and in such a situation it is well settled that there is no conflict of jurisdiction with prior suits *in rem*. Furthermore, we submit that neither were the proceedings in the New York State courts necessarily *in rem*. If either of these contentions be correct the doctrine of priority is not applicable.

(c) The ruling of the Circuit Court of Appeals is based upon the assumption that the New York State courts had jurisdiction of the surplus funds in question at the time the United States suits were commenced in the Federal court. This assumption, we believe, was erroneous. By virtue of the decrees of the Soviet Government, discussed more fully in the earlier part of this brief, that government acquired title to the surplus funds here in question before the commencement of the State court suits, and at no time has the Soviet Government subjected itself or its property to the jurisdiction of the New York State courts, which therefore acquired or retained no jurisdiction to adjudicate any rights or title to said funds.

A. THE FEDERAL COURT HAS ORIGINAL JURISDICTION OF THESE SUITS

Section 24 (1) of the Judicial Code, as amended, confers original jurisdiction upon the District Courts of the United States to entertain suits brought by the United States. The court below has held, however, that this provision of the Judicial Code is not applicable in respect of a suit brought by the United States claiming title to a *res,* when a State court has theretofore assumed jurisdiction over the *res.*

We, of course, do not dispute the existence of the general doctrine of priority of jurisdiction. We contend, however, that the general rule is not applicable, but is superseded by the specific provision of the Judicial Code, in cases such as these, wherein the actions are brought by the United States. It was so held in *United States* v. *Inaba,* 291 Fed. 416 (E. D. Wash.). In that case an action had been begun in the State court to foreclose labor liens against the crops of a tenant under lease from the United States as trustee for an Indian allottee, and a receiver had been appointed. The United States later brought a suit in the Federal court to foreclose its landlord's lien, and to enjoin the State receivership. A motion to dismiss the suit in the Federal court was denied. It was held that the Federal court had exclusive jurisdiction, and in aid and furtherance thereof the State receivership

was enjoined. The court, after citing Section 24 of the Judicial Code, stated as follows (p. 419):

> * * * the United States, having an interest in the property, may commence and maintain in its own courts such proceedings as may be necessary and appropriate to safeguard and protect its interests, even though such property prior thereto may have been brought within the jurisdiction of a state court for the purpose of adjudicating the rights of private litigants therein, over whom that court has acquired jurisdiction.

An analogous situation was presented in *United States* v. *McIntosh,* 57 F. (2d) 573 (E. D. Va.), in which the United States brought a bill to quiet title to land condemned for a marine corps base, and to enjoin the prosecution of an ejectment suit in the State court against United States officers as custodians of the property. A preliminary injunction was granted. The case arose on a motion to dismiss the injunction. The court considered the case mainly from the angle of the provision of 28 U. S. C. A. 379, forbidding an injunction of State suits except in bankruptcy, and held that the section did not apply where the jurisdiction of the action was solely in the Federal courts. The court held that it had sole and exclusive jurisdiction of the action brought by the United States to quiet its title to the land, and denied the motion to dismiss the injunction.

In *United States* v. *Babcock*, 6 F. (2d) 160 (D. C. Ind., 1925), the United States sought in the Federal court an injunction against the digging of a ditch across Lincoln Highway, a national highway, under a contract which had been authorized by a State court without providing for the replacement of the roadbed, and which would therefore obstruct traffic. In holding that the United States was entitled to this relief, notwithstanding the provisions of Section 265 of the Judicial Code, the court stated, at p. 161:

> While the Judicial Code provides that a writ of injunction shall not be granted in any court of the United States to stay proceeding in any state court, this court is of the opinion that this rule is not intended to apply to an action wherein the United States government is a party, and wherein it is necessary to issue such injunction to protect the interests of the government of the United States. Section 2, article 3, of the Constitution provides, among other things, that the judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority, and to controversies to which the United States shall be a party. Clearly this provision of the Constitution is intended to give to the federal government [court] jurisdiction, both in law and equity, where the United States is an interested party.

We submit that the ruling of the court below in the instant cases is likewise in conflict with the language which this Court used in *United States* v. *Lee,* 106 U. S. 196, at p. 222, where it was stated:

> Another consideration is, that since the United States cannot be made a defendant to a suit concerning its property, and no judgment in any suit against an individual who has possession or control of such property can bind or conclude the government, as is decided by this court in the case of *Carr* v. *United States,* already referred to, the government is always at liberty, notwithstanding any such judgment, to avail itself of all the remedies which the law allows to every person, natural or artificial, for the vindication and assertion of its rights. Hence, taking the present case as an illustration, the United States may proceed by a bill in chancery to quiet its title, in aid of which, if a proper case is made, a writ of injunction may be obtained. Or it may bring an action of ejectment, in which, on a direct issue between the United States as plaintiff, and the present plaintiff as defendant, the title of the United States could be judicially determined.

Should the decision of the court hereinbelow be affirmed, it would compel the United States, as the only means of asserting its right to this particular property, to enter its appearance in the pending actions in the State court. So to limit the rights of the United States is in practical effect to subject

the United States to suits without its consent. We think the holding of this Court in *United States* v. *Lee, supra,* adequately disposes of this question.

Furthermore, if the doctrine of the decision below should prevail, it is conceivable that in an action pending in a State court involving a *res,* the United States, should it seek to assert its right to such *res,* would, for procedural reasons, be compelled to appear as a party defendant. This Court has said that it is beyond the competence of any officer of the Government to bring in the United States as a party defendant in an action in a State court. *Case* v. *Terrell,* 11 Wall. 199; *Stanley* v. *Schwalby,* 162 U. S. 255. In such a situation, the United States would be powerless to maintain its rights.

We submit, therefore, that the United States must be permitted to select its forum when it asserts its sovereign ownership.

B. THE RULE OF PRIORITY OF JURISDICTION IS NOT APPLICABLE HEREIN BECAUSE (1) THE ACTIONS INSTITUTED BY THE UNITED STATES IN THE DISTRICT COURT ARE ACTIONS IN PERSONAM, AND (2) THE PROCEEDINGS INSTITUTED BY OTHERS IN THE NEW YORK STATE COURTS ARE ALSO IN PERSONAM

(1) In the instant suits, the United States is asking that the respondents account to it for any funds held by them which formerly belonged to the Soviet Government. Obviously, to allow the Federal court to pass upon the right asserted by the

United States would not necessarily affect the State court proceedings, or interfere with the jurisdiction or control over the *res* by the State court. Should the decision of the Federal court be favorable to the claim of the United States, it may be that the United States would be required to prove the claim in the State court proceedings.[21] But it does not follow that the Federal court has no jurisdiction to adjudicate the rights of the United States.

In *Waterman* v. *Canal-Louisiana Bank Company,* 215 U. S. 33, the complainant, a citizen of a different State, brought a bill against the executor and certain legatees, asking to have established her interest in certain portions of the estate. It was held that the Federal court had jurisdiction for the purpose of ascertaining the rights of the complainant to recover as against the executor. This Court stated as follows (p. 46):

> If the Federal court finds that the complainant is entitled to the alleged lapsed legacy and the residue of the estate, while it cannot interfere with the probate court in determining the amount of the residue arising from the settlement of the estate in the court of probate, the decree can find the amount of the residue, as determined by the administration in the probate court in the hands of the executor, to belong to the com-

[21] In making such a claim, the United States would not necessarily appear either as a plaintiff or as a defendant, but rather as an intervenor.

> plainant, and to be held in trust for her, thus binding the executor personally, as was the case in *Payne* v. *Hook,* 7 Wall. 425, *supra,* and *Ingersoll* v. *Coram,* 211 U. S. 335, *supra.*

We believe that the court below misconceived the effect of this decision, and that its attempt to distinguish it is untenable. It is argued in the majority opinion that in the *Waterman* case the executor had a personal liability, whereas in this case the depositary has no such personal liability. We submit that, so far as personal liability is concerned, the depositary here is in no better position than was the executor there. The duty of the respondents in each of the present cases is, like that of the executor in the *Waterman* case, to pay over the funds to the parties lawfully entitled thereto. The Federal court has jurisdiction to determine who those parties are. The present suits are *in personam,* even though any rights adjudicated therein may have to be satisfied out of a *res* alleged to be in the possession of the State court. Substantially the same situation existed in the *Waterman* case.

In *Riehle* v. *Margolies,* 279 U. S. 218, in holding that an action in the State court might be maintained to adjudicate a claim against a debtor, concurrently with a proceeding in the Federal court to distribute the debtor's assets, and that the judgment so obtained would be binding in the Federal court, this Court stated (p. 223):

> The contention that the judgment is not conclusive rests upon the argument that, be-

cause the appointment of the receiver draws to the appointing court control of the assets, and in the distribution of them among creditors there is necessarily involved a determination both of the existence of the claim and of the amount of the indebtedness, the Federal court must have the exclusive power to make that determination. The argument ignores the fact that an order which results in the distribution of assets among creditors has ordinarily a twofold aspect. Insofar as it directs distribution, and fixes the time and manner of distribution, it deals directly with the property. Insofar as it determines, or recognizes a prior determination of the existence and amount of the indebtedness of the defendant to the several creditors seeking to participate, it does not deal directly with any of the property. The latter function, which is spoken of as the liquidation of a claim, is strictly a proceeding *in personam*. Of course, no one can obtain any part of the assets, or enforce a right to specific property in the possession of a receiver, except upon application to the court which appointed him. *Lion Bonding & Surety Co.* v. *Karatz*, 262 U. S. 77, 88–9. But the judgment of the state court does not purport to deal with the property. The sole question involved there was the existence and amount of Margolies' claim against the corporation. And the sole question involved here is the proof of that claim. *There is no inherent reason why the adjudication of the liability of the debtor in personam*

> *may not be had in some court other than that which has control of the res.* It is only necessary that in the receivership proof of the claim be made in an orderly way, so that it may be established who the creditors are and the amounts due them. (Italics ours.)

The relief sought by the United States in the instant suits is similar to the relief sought by the plaintiff in *Riehle* v. *Margolies, supra.*

In *Allen* v. *United States,* 285 Fed. 678, 683 (C. C. A. 1st, 1923), the defendant, Allen, Commissioner of Banks of the State of Massachusetts, had taken possession of the Prudential Trust Company, which was insolvent. The United States brought a suit in the Federal District Court to establish a preferred claim in connection with the affairs of the Prudential Trust Company on account of the unauthorized deposit of public money in the bank by the Postmaster. The court used the following language (p. 684):

> It is also contended that, because the bank commissioner had taken possession of the property of the trust company, including the property of the United States under authority of the state of Massachusetts, the District Court was without jurisdiction to enter any decree; that the possession of the commissioner was equivalent to or analogous to that of a receiver appointed by the Supreme Judicial Court of Massachusetts, to which, under the statute appointing him, he must make his report. * * *

A citizen of a state other than that in which an estate is being administered may in a federal court establish his right to a share in the estate and enforce such adjudication against the administrator personally or his sureties. *Payne* v. *Hook,* 7 Wall. 425, 19 L. Ed. 260; *Yonley* v. *Lavender,* 21 Wall. 276, 22 L. Ed. 536; *Hess* v. *Reynolds,* 113 U. S. 73, 5 Sup. Ct. 377, 28 L. Ed. 927; *Byers* v. *McAuley,* 149 U. S. 608, 13 Sup. Ct. 906, 37 L. Ed. 867; *Waterman* v. *Canal-Louisiana Bank & Trust Co.,* 215 U. S. 33, 30 Sup. Ct. 10, 54 L. Ed. 80; *McClelland* v. *Carland,* 187 Fed. 915, 918, 110 C. C. A. 49. * * *

If a federal court may determine the share of an heir, legatee, or creditor in an estate under administration in a state court, it clearly has jurisdiction to determine, under the allegations in the bill and the admitted facts in this case, whether or not the cash effects in the commercial department of the trust company in the possession of the commissioner of banks is impressed with a trust in favor of the United States and the extent and character of the trust. * * *

We go no further than to determine that these deposits were wrongfully made and unlawfully received and that the total amount of money covered by them was held in trust by the trust company for the United States and came into the possession of the commissioner of banks impressed with this trust, and that, with the claims presented by him to the court of the State of Massachu-

> setts which have been proved, and allowed by him, he should include as an adjudicated claim that of the United States as herein determined.

Allen v. *United States, supra,* was also followed and cited with approval by the Circuit Court of Appeals for the First Circuit in the case of *Chase National Bank of New York* v. *Sayles,* 11 F. (2d) 948, wherein the Court said:

> * * * if the validity of the assignment and the rights of the plaintiffs therein could be determined in the probate court of Rhode Island, that in no way affects the general chancery powers of this or of the District Court, the rights of citizens of different states being involved. *Waterman* v. *Canal-Louisiana Bank Co.,* 30 S. Ct. 10, 215 U. S. 33, 54 L. Ed. 80; *Atwood* v. *Rhode Island Hospital Trust Co.* (C. C. A.), 275 F. 513, 24 A. L. R. 156. The proceeding being of the nature stated, it in no way interferes with the due administration of the estate in the probate court, and any decree which may be entered will operate, so far as the executors are concerned, against them personally. *Allen* v. *United States* (C. C. A.) 285 F. 678, 683, 684.

In *Brown* v. *Duffin,* 13 F. (2d) 708 (1926) (C. C. A. 6th), an accounting suit was begun in the State court. Thereafter a receivership proceeding was instituted in the Federal court. It was held that the State court action was *in personam,* and therefore did not interfere with the receivership proceeding in the Federal court. In

that case, the duty of the defendant was similar to the duty of the respondents in these actions, namely, to conserve the assets and pay them over to those lawfully entitled thereto. The court stated as follows (p. 710):

> There is, however, a third class of suits, in which, though the custody of property is not essential to attain the object of the suit, yet during the progress of the case such custody may become necessary or desirable, as collateral to the full measure of relief, which was primarily sought *in personam*. These cases are only inchoately *in rem*, and the exclusive jurisdiction dates either from the actual taking of possession, or, at the earliest, from some specific request that the court do take possession. We put the *Brown* state court case in this class. It did not ask that the court seize any property. *A judgment in equity that defendant first account, and then pay over, is a judgment in personam.* Yet it showed a body of property with the trustees, for which a receivership might well be later advisable, and the prayer for general relief would have supported such a result. Hence it was, up to the time of filing the Federal bill, a suit *in personam*, and did not bar the general jurisdiction of the federal court. (Italics added.)

This case is clear authority for our contention that the instant suits by the United States for an accounting are *in personam*.

(2) It is submitted that the proceedings in the New York State courts are also *in personam*.

Respondents, however, contend that the proceedings in the State court are supplemental to and a continuation of the original liquidation proceeding instituted and carried out by the Superintendent of Insurance for the protection and payment of domestic creditors and policyholders, and that therefore the pending proceedings in the State court are *in rem*.

Even assuming (contrary to *Farrell* v. *Stoddard* [22]) that the State court acquired custody and control of the property by virtue of the original liquidation proceedings, nevertheless, that court's authority in the liquidation ended when the superintendent had paid the domestic creditors and policyholders. Hence the theory upon which respondents contend that the pending proceedings are *in rem* fails.

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[22] In *Farrell* v. *Stoddard* 1 F. (2d) 802, 803 (1924) (N. D. N. Y.), the court stated as follows:

"An examination of section 63 of the Insurance Law of the state of New York makes it clear that the superintendent of insurance is a public officer in the executive department of the state government and that he still retains his character as a public officer when he acts as liquidator of insurance companies under the provisions of this statute. His power to act as custodian of the *res* comes alone from the statute. The judicial power cannot change or modify this statute, or affect his power in any respect whatever. True, the defendant must first apply to the court for an order to act as liquidator. That, however, merely means that the court must give the signal to start the machinery under which the superintendent, the agent of the executive power, acts. Thereafter the defendant, as the representative of the executive power, pays no heed to the court or its mandates. His chart is the statute under which he acts."

Furthermore, any jurisdiction in the State court, over the *res,* was lost when the State court relinquished the funds and ordered them deposited in the Bank of New York and Trust Company, and the Manhattan Company, as agents and depositaries of the insurance companies, under instructions to pay out only upon the order of "a court of competent jurisdiction." Had the State court intended to retain jurisdiction of the funds, it would have provided that further payments could be made only "upon the further order of this Court."

It is also to be noted that the deposit of the funds in the Bank of New York & Trust Co., and the Manhattan Company, subject to court order as noted above, was an *alternative* to relinquishing the funds to the surviving directors themselves. *Matter of People* (*Northern Ins. Co.*), 255 N. Y. 433, 435. Had the latter course been adopted, it certainly could not be said that thereafter the State court still maintained its custody and control of the *res.*

C. THE STATE COURTS LACKED JURISDICTION TO ENTERTAIN SUITS INVOLVING THE DISPOSITION OF THE FUNDS IN THE INSTANT CASES BECAUSE AT THE TIME SUCH SUITS WERE INSTITUTED THE FUNDS IN QUESTION WERE THE PROPERTY OF A SOVEREIGN WHO HAD NOT CONSENTED TO BE SUED

Even if this Court should not accept the contentions stated above, and should hold that the Federal court does not necessarily have jurisdiction of the instant suits by virtue of Sec. 24 (1) of the Ju-

dicial Code, and hold further that the instant suits, and also the New York State court proceedings, are *in rem*,—nevertheless the rule of priority of jurisdiction is not applicable herein, because the State courts lack jurisdiction over the surplus funds in question, since they were formerly the property of a foreign sovereign, and on November 16, 1933, became the property of the United States.

We submit, therefore, that in order to decide the question of jurisdiction, it is necessary for this Court first to determine whether the Soviet Government by its decrees acquired title to the surplus assets of the dissolved Russian insurance companies remaining after the claims of domestic creditors and policyholders had been satisfied.

The State courts possessed jurisdiction only for the purpose, as stated in the New York statute, of paying the claims of domestic creditors and policyholders, which claims constituted a lien upon the funds. We admit, of course, that the Soviet Government took title to these funds subject to any liens or charges against them which the New York statute created. However, after the Soviet Government acquired title to such property, it was beyond the power of any court or any State officer, without the consent of that government, to place additional charges upon or adjudicate claims against such funds.

It is axiomatic that no nation may be sued without its consent. The property or personal rights of a sovereign cannot be made the subject of litigation in the courts of another nation, unless the

sovereign agrees to be a party to such litigation.[23] Whenever it appears in any litigation that the party defendant or a necessary party in interest is a foreign state or a foreign sovereign, the courts should immediately refuse to assume or retain jurisdiction of the controversy.[24] This is true whether the foreign nation has been recognized or not, by the country before whose courts the litigation is pending. *Wulfsohn* v. *Russian Socialist Federated Soviet Republic,* 234 N. Y. 372, writ of error dismissed, 266 U. S. 580. The foreign sovereign is not required to come into our courts and plead immunity. *Nankivel* v. *Omsk All Russian Government,* 237 N. Y. 150.

It is apparent that at the time the State suits in question were instituted (which had for their purpose the disposition of the surplus assets of the dissolved Russian insurance companies) the funds in question were the property of the Soviet Gov-

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[23] *The Exchange*, 7 Cranch. 116, 137; *Underhill* v. *Hernandez*, 168 U. S. 250; *Porto Rico* v. *Rosaly*, 227 U. S. 270; *DeHaber* v. *Queen of Portugal*, 17 Q. B. D. 171, 196; *Vavasseur* v. *Krupp L. R.*, 9 Ch. D. 351; *The Parlement Belge*, 5 P. D. 197; *Wadsworth* v. *The Queen of Spain*, 17 Q. B. D. 171; *Strousberg* v. *Costa Rica*, 44 L. T. 199; *Oliver Trading Company* v. *Mexico*, 5 F. (2d) 659 (C. C. A. 2d), certiorari denied, 267 U. S. 596; *Mighell* v. *Sultan of Johore* (1894), 1 Q. B. D. 149.

[24] *The Exchange*, *supra; Ex parte Muir*, 254 U. S. 522; *Berizzi Brothers Co.* v. *S. S.* "*Pesaro*", 271 U. S. 562 (1926); *Duff Development Co., Ltd.* v. *Government of Kelantan* (1924), A. C. 797; *Oliver Trading Co.* v. *Mexico*, *supra.*

ernment, which was asserting its ownership, and that the New York courts were apprised of that fact.[25]

Further, it definitely appears that all three Russian insurance companies concerned herein—the Moscow Fire Ins. Co. which purported to maintain the later action against the Bank of New York and Trust Co., the Northern Ins. Co. of Moscow which purported to make the later assignment to the Manhattan Company for the benefit of creditors, and the First Russian Ins. Co. which claims the surplus assets in the hands of the Superintendent of Insurance—were nationalized and ceased to exist as Russian corporations, by virtue of decrees of the Soviet Government, prior to any and all proceedings now pending in the New York State courts. Thus, in one case there was no corporate plaintiff, in the second there was not any corporate assignor, and in the third there was no corporation which could claim the surplus assets in the hands of the Superintendent of Insurance. It therefore results that any proceedings purported to have been instituted by any of these nationalized Russian corporations could not have given the court any jurisdiction, *in rem* or otherwise, over the funds herein concerned.

It follows, we believe, that the courts of New York had no jurisdiction over these surplus funds

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[25] See opinion of Court of Appeals in *Matter of People* (Russian Reinsurance Co.) 255 N. Y. 415, 420, 425; also *Russian Reinsurance Co.* v. *Stoddard*, 240 N. Y. 149.

subsequent to the time that the claims of domestic creditors and policyholders were satisfied. It is, however, unnecessary, for the purpose of these cases, to determine the exact time when the courts of New York ceased to have jurisdiction over these funds, because, in any event, as was suggested by Judge Manton in his dissenting opinion they ceased to have jurisdiction of such funds on November 16, 1933, the date on which the Soviet Government was recognized.

In the light of the fact, therefore, that the courts of the State of New York had lost jurisdiction of the funds in question prior to the time the United States instituted its suits in the Federal court, we respectfully submit that the Federal court has jurisdiction of this action, there existing no proper jurisdiction in any other court.

CONCLUSION

We submit that the decision of the court below is erroneous and should be reversed.

In any event, we submit that the United States is entitled to a review on the merits of the dismissal of the bills of complaint by the District Court, since a ruling on the Government's contention on the merits is prerequisite to a determination of the jurisdiction of the Federal court.

We submit further that even if the decision of the court below is correct, the United States is entitled to a modification of the decree of the District

Court to provide for a dismissal of the bills for want of jurisdiction rather than for insufficiency.

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NOVEMBER, 1935.

APPENDIX

Section 24 of the Judicial Code, as amended (U. S. C., Title 28, Section 41)—

> The district courts shall have original jurisdiction as follows:
>
> First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, * * *.

Section 27, New York Insurance Law—

> *Funds and capital within the United States of corporations organized outside of the United States, transacting in this state, the business of fire or marine insurance.* 1. No insurance corporation organized and existing under the government or laws of any state or country outside of the United States, hereafter authorized to transact the business of fire or marine or fire and marine insurance in this state, shall transact such business therein unless it shall have securities or other property within the United States, deposited with insurance departments or state officers and held in trust by a trustee or trustees, as hereinafter provided, for the protection of all its policyholders and creditors within the United States, as follows: (*a*) If authorized to transact the business of fire insurance only, two hundred thousand dollars deposited with the superintendent of insurance of this state and three hundred thousand dollars

deposited with insurance departments or state officers or so held in trust; (*b*) if authorized to transact the business of marine insurance only, two hundred thousand dollars deposited with the superintendent of insurance of this state and one hundred thousand dollars deposited with insurance departments or state officers or so held in trust; or (*c*) if authorized to transact the business of both fire and marine insurance, four hundred thousand dollars deposited with the superintendent of insurance of this state and four hundred thousand dollars deposited with insurance departments or state officers or so held in trust.

2. For all purposes specified in this chapter, the capital of such a foreign insurance corporation now or hereafter authorized to transact the business of fire or marine or fire and marine insurance in this state shall be the aggregate value of all securities and other property within the United States deposited with insurance departments or state officers and held in trust by a trustee or trustees for the protection of all its policyholders within the United States, or all its policyholders and creditors within the United States, after taking from such aggregate value the same deductions for losses, debts, and liabilities in the United States and for unearned premiums on risks therein not yet expired as are authorized or required by the laws of this state or the regulations of the superintendent of insurance with respect to domestic insurance corporations transacting the same kind or kinds of business. * * *

Section 63, New York Insurance Law—

Proceedings against and liquidation of delinquent insurance corporations. This section shall apply to all corporations, associa-

tions, societies and orders to which any article of this chapter is applicable, and to all corporations, associations, societies and orders which are subject to examination under any section of this chapter, or which are doing or attempting to do or representing that they are doing the business of insurance in this state, or which are in process of organization intending to do such business therein, anything as to any such corporations, associations, societies or orders provided in this article to the contrary notwithstanding; and the words "corporation" or "corporations" herein shall also include all such associations, societies and orders as well as all voluntary or unincorporated associations.

1. Whenever any domestic corporation (*a*) is insolvent; or (*b*) has refused to submit its books, papers, accounts or affairs to the reasonable inspection of the superintendent, or his deputy or examiner; or (*c*) has neglected or refused to observe an order of the superintendent to make good within the time prescribed by law any deficiency, whenever its capital, if it be a stock corporation, or its reserve, if it be a mutual corporation, shall have become impaired, or (*d*) has, by contract of reinsurance or otherwise, transferred or attempted to transfer substantially its entire property or business, or entered into any transaction the effect of which is to merge substantially its entire property or business in the property or business of any other corporation, association, society or order, without having first obtained the written approval of the superintendent; or (*e*) is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to the public; or

(*f*) has willfully violated its charter or any law of the state; or (*g*) whenever any officer thereof has refused to be examined under oath touching its affairs; or (*h*) if such corporation be organized under article six, seven or eight of this chapter, its condition is found, after examination, to be such that it could not meet the requirements for incorporation and authorization specified in such articles, respectively, the superintendent may, the attorney general representing him, apply to the supreme court or any justice thereof in the judicial district in which the principal office of such corporation is located for an order directing such corporation to show cause why the superintendent should not take possession of its property and conduct its business, and for such other relief as the nature of the case and the interests of its policyholders, creditors, stockholders, or the public may require.

* * * * *

4. Whenever any of the grounds of jurisdiction over domestic corporations specified in subdivisions (*a*), (*b*), (*c*), (*d*), (*e*), (*f*) and (*g*) of subsection one of this section exist or arise with reference to any corporation incorporated by or existing under the government or laws of any country outside of the United States and authorized to transact the business of insurance and having assets in this state; or whenever any foreign corporation so authorized and having assets in this state has been placed in the hands of a receiver *or had its property sequestrated in its domiciliary state or country* [italics ours] or in any other state or country, the superintendent may, the attorney general representing him, apply to the supreme court or any justice thereof in the judicial district in

which such corporation has its principal office for the transaction of business in this state, for an order directing such corporation to show cause why the superintendent should not take possession of its property and conserve its assets for the benefit of its creditors, and for such other relief as the nature of the case and the interests of its policyholders, creditors, stockholders, or the public may require.

5. On such application, or at any time thereafter, such court may, in its discretion, issue an injunction restraining such corporation and its officers, agents and employees from the transaction of its business or disposition of its property until the further order of the court. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or direct the superintendent forthwith to take possession of the property and conserve the assets of such corporation, and retain such possession until, on the application either of the superintendent, the attorney general representing him, or of such corporation, it shall, after a like hearing, appear to the court that the ground for such order directing the superintendent to take possession has been removed and that the corporation can properly resume possession of its property and conduct its business. If, on such application, the court shall direct the superintendent to take possession of the property and conserve the assets of such corporation, the rights and duties of the said superintendent with reference to such corporation and its said assets shall be those heretofore exexercised by and imposed upon anciliary [1] receivers of foreign corporations in this state.

[1] So in original.

Assignment by the Soviet Government to the United States Government

Washington, *November 16, 1933.*

My Dear Mr. President: Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counterclaims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above, not to make any claim with respect to:

(*a*) judgments rendered or that may be rendered by American courts in so far as they relate to prop-

erty, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

(*b*) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof.

I am, my dear Mr. President,

Very sincerely yours,

MAXIM LITVINOFF,
People's Commissar for Foreign Affairs,
Union of Soviet Socialist Republics.

Mr. FRANKLIN D. ROOSEVELT,
President of the
United States of America,
The White House.

THE WHITE HOUSE,
Washington, November 16, 1933.

MY DEAR MR. LITVINOV: I am happy to acknowledge the receipt of your letter of November 16, 1933, in which you state that:

"The Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the

successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

"The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above, not to make any claim with respect to:

"(*a*) judgments rendered or that may be rendered by American courts insofar as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

"(*b*) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits or obligations of any Government of Russia or nationals thereof."

I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of Soviet Socialist Republics,

and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet.

I am, my dear Mr. Litvinov,

Very sincerely yours,

FRANKLIN D. ROOSEVELT.

Mr. MAXIM M. LITVINOV,

People's Commissar for Foreign Affairs,

Union of Soviet Socialist Republics.

U. S. GOVERNMENT PRINTING OFFICE: 1934